

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.19384 of 1999

V.Nallathambi

.. Petitioner.

Versus

Commissioner,
Udumalaipet Municipality,
Udumalaipet, Coimbatore District.

.. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the respondent in his Proceedings Na.Ka.No.5558/98/A 1, dated 16.11.1998 and quash the same and direct the respondent to restore the petition in possession of Shop No.2, Municipality Commercial Complex, Rajendra Street, Udumalaipet, Coimbatore District.

For petitioner : Mr.C.Selvaraju Senior Counsel
for Mr. S. Kamadevan

For respondent : Mr.G.Sankaran

O R D E R

Heard Mr.C.Selvaraju, the learned counsel appearing for the petitioner and Mr.G.Sankaran, the learned counsel appearing for the Municipality.

2. The brief facts, as stated by the petitioner are as follows:

The respondent Municipality had constructed shops, which were brought to public auction for allotment on lease. The petitioner was the successful lessee in respect of Shop No.2 in the Municipality Commercial Complex at Udumalaipet, Coimbatore District. From the year 1986, the petitioner has been in occupation of the shop, as a lessee of the respondent Municipality. While so, the respondent had issued a show cause notice, dated 14.10.1998, calling upon the petitioner to submit his explanation, as to why the lease should not be cancelled and possession be taken from the petitioner, for the reason that the

petitioner had sub-let the premises in question. The petitioner had not submitted any explanation, since he had not sub-let the premises to any one. Thereafter, an order, dated 16.11.1998, had been passed cancelling the lease. The said order had not been served on the petitioner.

3. One Ramalingam had forcibly took possession of the shop in collusion with the then Special Officer of the respondent Municipality and has been running a wine shop in the said premises from the year 1992. Challenging the cancellation of the lease, by an order, dated 16.11.1998, the said Ramalingam had filed a writ petition before this Court and the same had been dismissed. Thereafter, the said Ramalingam had been evicted from the shop and it was taken over by the respondent. Only at that stage, the petitioner came to know about the cancellation of the lease. Aggrieved by the order, dated 16.11.1998, cancelling the lease granted to the petitioner, the present writ petition has been filed before this Court, invoking Article 226 of the Constitution of India.

4. A counter affidavit has been filed on behalf of the respondent stating that the petitioner, in violation of the terms and conditions of the lease, had sub-let the shop No.2 to one Ramalingam and the Shop No.13 to one Kadirvel. Therefore, the petitioner was served with a show cause notice, calling upon him to offer his explanation as to why the lease should not be cancelled. Though the show cause notice, dated 30.7.1998, had been received by the petitioner, he had not submitted any explanation. Thereafter, another show cause notice, dated 14.10.1998, had been sent to the petitioner. Since, the petitioner had not submitted any explanation, the matter was placed before the respondent Council, which had passed the resolution in Resolution No.581, dated 13.11.1998, cancelling the lease granted in favour of the petitioner. The order cancelling the lease granted to the petitioner had been sent to the petitioner by Registered Post with acknowledgment due and the said order had been received by him, on 18.11.1998. Therefore, the submission of the petitioner that he was not served with the notice of cancellation, is false.

5. It is also stated by the respondent that in the writ petition in W.P.No.18415 of 1998, filed by the said C.Ramalingam, challenging the order, dated 16.11.1998, cancelling the lease granted to the petitioner, it has been specifically stated that the petitioner in the present writ petition had given the Shop No.2 to C.Ramalingam by way of sub-lease through a rental agreement, entered into between them. The said writ petition was dismissed by this Court by an order, dated 9.12.1998, and the writ appeal filed against the said order in W.A.No.137 of 1999, was also dismissed by a Division Bench of this Court, by its order, dated 30.1.1999. However, the petitioner had filed a writ

petition, in W.P.No.19153 of 1998, challenging the cancellation of lease, in respect of Shop No.13, on similar grounds. The said writ petition had been dismissed by this Court by an order, dated 15.12.1998. The above facts have not been stated by the petitioner in the present writ petition. Therefore, the claims made by the petitioner are false and frivolous and the writ petition ought to be dismissed with costs.

6. Considering the submissions made on behalf of the petitioner, as well as the respondent, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief as prayed for in the writ petition.

7. It is seen that the lease granted to the petitioner had been cancelled after issuing a show cause notice to the petitioner and on considering the objections raised by him. Further, from the facts of the case, it is seen that the shop allotted to the petitioner had been in the possession of one C.Ramalingam, who had filed a writ petition before this Court stating that he had taken the shop on lease as the petitioner had sub-let the premises to him for running an Indian Made Foreign Liquour sales out-let. An earlier writ petition filed by the petitioner with regard to the shop No.13, on similar grounds had been dismissed by this Court, by its order, dated 15.12.1998. The writ petition, in W.P.No.18415 of 1998, filed by C.Ramalingam, who had taken the shop in question on sub-lease from the petitioner had been dismissed by this Court, by its order, dated 9.12.1998. The writ appeal filed against the said order in W.A.No.137 of 1999, had also been dismissed by a Division Bench of this Court by an order, dated 30.1.1999.

8. In such circumstances, there is no merit in the present writ petition and hence, the writ petition stands dismissed. No costs.

Csh

Sd/
Asst.Registrar

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Sub Asst.Registrar

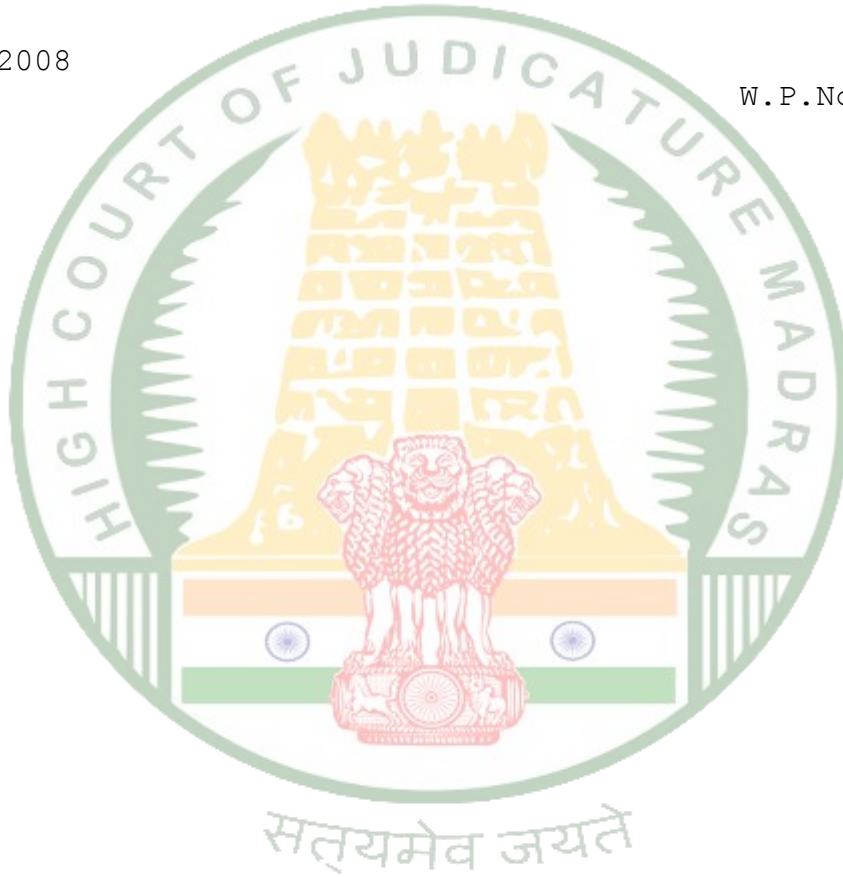
To

The Commissioner,
Udumalaipet Municipality,
Udumalaipet, Coimbatore District.

+ 1 cc to Mr. S. Mani, Advocate SR No. 72774

BK (CO)
SR/3.1.2008

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